



1995 SENATE BILL 362

October 3, 1995 - Introduced by Senators SCHULTZ, ROSENZWEIG, HUELSMAN, DARLING, FITZGERALD, WELCH, ZIEN and BRESKE, cosponsored by Representatives ALBERS, SERATTI, POWERS, OTTE, AINSWORTH, SCHNEIDERS, OTT, LORGE, LADWIG, HAHN, DOBYNS, KREIBICH, JOHNSRUD, LEHMAN, GROTHMAN, RYBA, HANSON and CULLEN. Referred to Committee on Insurance.

1 **AN ACT to renumber and amend** 631.11 (1) (a), 631.11 (1) (b), 631.11 (1) (c),
2 631.11 (2) and 631.11 (4); **to amend** 631.11 (1) (title), 631.11 (3) and 631.36 (1)
3 (e); and **to create** 631.11 (1) (a) 3., 631.11 (4m) (title) and 631.11 (6) of the
4 statutes; **relating to:** grounds, and notice requirements, for rescission of
5 insurance contracts.

Analysis by the Legislative Reference Bureau

Under current law, an insurer may cancel an insurance contract before the end of the term (midterm cancellation) for various reasons, including material misrepresentation and substantial breaches of contractual duties, conditions or warranties. No midterm cancellation is effective, however, until at least 10 days after the insurer provides written notice of the cancellation to the insured by 1st class mail or delivery.

Under common law, a contract may be rescinded for fraud, material misrepresentation, mistake or breach of contract. If a contract is rescinded it is terminated not merely from the point of rescission but from the very beginning, as if it had never been entered into. The Wisconsin supreme court has interpreted that the midterm cancellation provisions under current law apply to an attempt by an insurer to rescind an insurance contract so that there is coverage for a loss occurring before the termination of the contract becomes effective. This bill specifies that the midterm cancellation provisions do not apply to the rescission of any insurance contract.

Current law contains provisions that specify under what conditions a misrepresentation or a breach of an affirmative warranty on the part of an insured affects the insurer's obligations under the policy. The conditions include such considerations as the insurer's reliance and whether the misrepresentation or breach contributes to a loss or is material. The bill provides that the same conditions

apply in order for a misrepresentation or a breach of an affirmative warranty to constitute grounds for rescission of an insurance contract, and specifies that it is a misrepresentation or the breach of an affirmative warranty that is made in the negotiation for the insurance contract that affects the insurer's obligations or constitutes grounds for rescission. Current law also provides that, in order to use the defense of misrepresentation or breach of warranty against a claim, an insurer must notify an insured within 60 days after discovering a misrepresentation or breach of an affirmative warranty of its intention to defend against any claim that arises. The bill likewise requires an insurer, within 60 days after discovering a misrepresentation or breach of an affirmative warranty, to notify the insured of its intention to rescind in order to rescind the policy on the basis of the misrepresentation or breach of an affirmative warranty.

Also under current law, in order for a statement or warranty made in the negotiation for an insurance contract to affect an insurer's obligations under the policy, it must be stated in the policy or in a written application that is attached to the policy. The bill provides that the statement or warranty made in the negotiation may also be provided in a written communication to the insured within 60 days after the effective date of the policy in order to affect the insurer's obligations under the policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 631.11 (1) (title) of the statutes is amended to read:

2 631.11 (1) (title) ~~ENTIRE~~ EFFECT OF NEGOTIATIONS FOR CONTRACT.

3 **SECTION 2.** 631.11 (1) (a) of the statutes is renumbered 631.11 (1) (a) (intro.) and
4 amended to read:

5 631.11 (1) (a) (title) ~~Signed application for policy~~ Statement or warranty.

6 (intro.) No statement, representation or warranty made by ~~any a~~ person other than
7 the insurer or an agent of the insurer in the negotiation for an insurance contract
8 affects the insurer's obligations under the policy unless it is stated in the any of the
9 following:

10 1. The policy, or in a.

1 2. A written application signed by such the person, provided that a copy of
2 which the written application is made a part of the policy by attachment or
3 endorsement.

4 **SECTION 3.** 631.11 (1) (a) 3. of the statutes is created to read:

5 631.11 (1) (a) 3. A written communication provided by the insurer to the
6 insured within 60 days after the effective date of the policy.

7 **SECTION 4.** 631.11 (1) (b) of the statutes is renumbered 631.11 (4m) (a) and
8 amended to read:

9 631.11 (4m) (a) (title) *Copy of application to be made available.* The
10 policyholder under a life or disability insurance policy and any person whose life or
11 health is insured under the policy may request in writing a copy of the application
12 if he or she did not receive the policy or a copy of it, or if the policy has been reinstated
13 or renewed without attachment of a copy of the original application. If the insurer
14 does not deliver or mail a copy as requested within 15 working days after receipt of
15 the request by the insurer or its agent, or, in the case of a group policy certificate
16 holder, does not inform such person within the same period how he or she may inspect
17 the policy and application during normal business hours at a place reasonably
18 convenient to the certificate holder, nothing in the application affects the insurer's
19 obligations under the policy to the person making the request. The A person whose
20 life or health is insured under a group life or disability insurance policy has the same
21 right to request a copy of any document ~~subject to~~ specified in par. (e) (b), including
22 the certificate.

23 **SECTION 5.** 631.11 (1) (c) of the statutes is renumbered 631.11 (4m) (b) and
24 amended to read:

1 631.11 (4m) (b) (title) ~~Signed application or enrollment form for group~~
2 ~~insurance certificate~~ Statement or warranty. No statement, representation or
3 warranty made by or on behalf of a particular certificate holder under a group life
4 or disability insurance policy affects the insurer's obligations under the certificate
5 unless it is stated in the certificate, or in a written document signed by the certificate
6 holder, a copy of which is supplied to the certificate holder or the beneficiary whose
7 rights would be affected.

8 **SECTION 6.** 631.11 (2) of the statutes is renumbered 631.11 (1) (b) (intro.) and
9 amended to read:

10 631.11 (1) (b) (title) ~~Effect of Misrepresentation or breach of affirmative~~
11 ~~warranty.~~ (intro.) No misrepresentation ~~or,~~ and no breach of an affirmative
12 warranty, that is made by a person other than the insurer or an agent of the insurer
13 in the negotiation for or procurement of an insurance contract constitutes grounds
14 for rescission of, or affects the insurer's obligations under, the policy unless the any
15 of the following applies:

16 1. The insurer relies on it the misrepresentation or affirmative warranty and
17 it the misrepresentation or affirmative warranty is either material or is made with
18 intent to deceive, ~~or unless the,~~

19 2. The fact misrepresented or falsely warranted contributes to the loss.

20 **SECTION 7.** 631.11 (3) of the statutes is amended to read:

21 631.11 (3) **EFFECT OF FAILURE OF CONDITION OR BREACH OF PROMISSORY WARRANTY.**
22 No failure of a condition prior to ~~the a~~ loss and no breach of a promissory warranty
23 constitutes grounds for rescission of, or affects ~~the an~~ insurer's obligations under ~~the,~~
24 an insurance policy unless it exists at the time of the loss and either increases the

1 risk at the time of the loss or contributes to the loss. This subsection does not apply
2 to failure to tender payment of premium.

3 **SECTION 8.** 631.11 (4) of the statutes is renumbered 631.11 (4) (a) and amended
4 to read:

5 631.11 (4) (a) (title) *Knowledge when policy issued.* No misrepresentation made
6 by or on behalf of the a policyholder and no breach of an affirmative warranty or
7 failure of a condition constitutes grounds for rescission of, or affects the an insurer's
8 obligations under ~~the, an insurance~~ policy if at the time the policy is issued the
9 insurer has either constructive knowledge of the facts under s. 631.09 (1) or actual
10 knowledge. If the application is in the handwriting of the applicant, the insurer does
11 not have constructive knowledge under s. 631.09 (1) merely because of the agent's
12 knowledge.

13 (b) (title) *Knowledge acquired after policy issued.* If after issuance of a an
14 insurance policy the an insurer acquires knowledge of sufficient facts to constitute
15 grounds for rescission of the policy under this section or a general defense to all
16 claims under the policy, the insurer may not rescind the policy and the defense is not
17 available unless the insurer notifies the insured within 60 days after acquiring such
18 knowledge of its intention to either rescind the policy or defend against a claim if one
19 should arise, or within 120 days if the insurer determines that it is ~~deemed~~ necessary
20 ~~by the insurer~~ to secure additional medical information.

21 **SECTION 9.** 631.11 (4m) (title) of the statutes is created to read:

22 631.11 (4m) (title) LIFE AND DISABILITY CONTRACTS.

23 **SECTION 10.** 631.11 (6) of the statutes is created to read:

24 631.11 (6) INCONTESTABILITY PROVISIONS. This section is subject to ss. 632.46 and
25 632.76.

